

REMARKS

Claims 1-3, 5-9, 14-18, 21, 22, 25, and 26 are pending in the application. The sole remaining issue with respect to the pending claims is the non-statutory obviousness-type double patenting rejection set forth on pages 2 and 3 of the Office Action. Applicant appreciates that a timely filed Terminal Disclaimer may be filed to overcome this rejection. However, applicant respectfully submits that the double patenting rejection is not proper, and requests reconsideration of the rejection, as set forth below.

An obviousness-type double patenting rejection is appropriate where the claims of the examined application (the present application) are not patentably distinct from the claims of the reference because the examined application claim is either anticipated by or obvious in view of the reference claims. This analysis hinges on the claims of the reference and the claims of the present application, and not the disclosure of the reference.

The Boney '125 reference contains claims 1 through 14. With respect to the deflector set forth in element (b) of each of independent claims 1 and 7, a deflection angle of between about 10 degrees to about 80 degrees with respect to the source of the fibers is given. Although a claimed range is stated, the claims do not state or otherwise suggest that the deflector is anything but mechanical, or is adjustable within the range. In the "Response to Arguments" section of the Office Action, the Examiner states the following:

The Examiner responds that Boney et al. claims that the mechanical (contacting) deflecting device is adjustable, and one of ordinary skill in the art could adjust such a device as desired in order to provide a desired angle of deflection, and it would have been obvious to one of ordinary skill

in the art at the time the invention was made to substitute a pneumatic deflecting device for a mechanical deflecting device since Gordon et al. teaches the equivalence of electrostatic, mechanical and pneumatic deflecting devices ...

The fact that the Boney '125 disclosure (and not the claims) teaches that the deflector may be adjustable (column 8, lines 30-39), is not relevant to the obviousness-type double patenting determination. The "adjustable" feature cannot be read into the claims for purposes of sustaining the obviousness-type double patenting rejection.

In any event, even if the "adjustable" feature of the deflector in Boney '125 was expressly referenced in the claims of Boney '125 (which would arguably support referring to the specification to define the limitation), such would not support the obviousness-type double patenting rejection. Boney '125 only describes that the deflector has a different angular orientation in a single plane with respect to the access of the source of continuous filaments. This plane and angle "B" are illustrated in Figs. 1A and 1B. There is absolutely no disclosure, suggestion, or other reason, expressed or implied, in Boney '125 to support that the deflector is also angled at a downward angle with respect to the horizontal plane. The "adjustable" feature of Boney '125 must be interpreted in view of the entire disclosure, and the disclosure only describes and suggests that the deflector may have various angular orientations in the single horizontal plane. Substituting an air deflector for the mechanical deflector of Boney '125 does not change this fact. Boney '125 provides no reason, incentive, or appreciation of the arrangement according to the present claims calling for deflection of the fibers at a downward angle with respect to the horizontal plane and a sideward angle with respect to the machine direction (MD).

Plainly, the only incentive, motivation, or other reason to modify the deflector of Boney '125 in the manner suggested in the Final Office Action results from applicant's disclosure. The U.S. Supreme Court recently affirmed that "a fact finder should be aware, of course, of the distortion caused by hindsight bias and must be cautious of argument reliant upon ex post reasoning." KSR International Co. v. Teleflex, Inc., 127 S.Ct. 1727. Only with applicant's present specification would one have a reason or other motivation to reconfigure the deflector structure of Boney '125 in accordance with the present independent claims.

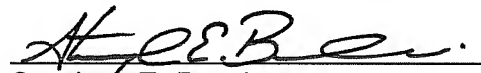
At best, it may be obvious to one of ordinary skill in the art to optimize the horizontal plane angle of the deflector in Boney '125 in that "the discovery of an optimum value of a variable in a known process is normally obvious." In re Antonie, 559 F.2d 618 (CCPA 1977). However, optimization of the angle "B" in the horizontal plane for the deflector in Boney '125 in no way suggests a completely different angular orientation in a different plane, namely a downward angle with respect to the horizontal plane. The recognized exception to the rule of Antonie is where the parameter optimized was not recognized in the prior art as one that would affect the results. Id. In the present situation, the Examiner has not pointed to any teaching in either Boney '125 or any other reference of record, or provided any other explanation based on sound reasoning, that would support the conclusion that those skilled in the art would have even appreciated from Boney '125 that operation of the machine could be improved by also angling the deflector downward with respect to the horizontal plane.

Accordingly, applicant respectfully submits that the obviousness-type double patenting rejection is not supported, and should be withdrawn. Favorable action

thereon is respectfully requested. The Examiner is encouraged to contact the undersigned at his convenience should he have any questions regarding this matter or require any additional information.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "S.E. Bondura", is written over a horizontal line.

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